

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7156

Petition of UPC Vermont Wind, LLC, for a Certificate of)
Public Good, pursuant to 30 V.S.A. § 248, authorizing the)
construction and operation of a 52 MW wind electric)
generation facility, consisting of 26 wind turbines, and)
associated transmission and interconnection facilities, in)
Sheffield and Sutton, Vermont)

Order entered: 5/14/2008

**ORDER RE LEASE LANGUAGE, DECOMMISSIONING PLAN,
AND REQUEST FOR HEARINGS**

Introduction

In today's Order, the Public Service Board ("Board") approves a revised decommissioning plan submitted by UPC Vermont Wind, LLC's ("UPC") and UPC's revised language for its leases with landowners. The Board also denies Ridge Protectors, Inc.'s ("RPI") request for discovery and hearings.

Background and Positions of the Parties

On August 8, 2007, the Public Service Board ("Board") issued an Order and Certificate of Public Good ("CPG") approving UPC's petition to construct a wind generation facility in Sheffield, Vermont, but requiring that certain conditions be met prior to commencing site construction. On December 21, 2007, UPC filed a request to install the project's meteorological towers, with information purporting to satisfy those CPG conditions that must be met prior to commencement of construction. That information includes a copy of the leases that UPC has entered into with the landowners hosting the project, and a decommissioning plan.

On January 14, 2008, the Department of Public Service ("Department") filed a letter recommending that the Board deny UPC's request to begin construction because the decommissioning plan that UPC filed on December 21:

is insufficient in that it fails to account for inflation in decommissioning costs over the life of the project, does not fully account for decommissioning the substation and interconnection facilities that will be used to interconnect the project with VELCO's 115 kV transmission line, and does not include a proposed reporting mechanism related to the Board-established trigger for decommissioning review.

On January 15, 2008, and January 22, 2008, RPI filed letters¹ contending that the decommissioning plan does not include sufficient money to decommission the project, does not provide for adequate remediation of the disturbed sites, and does not provide for unexpected contingencies. Further, RPI contends that several conditions contained in the August 8 CPG have not been met, and seeks discovery and evidentiary hearings on each of the "conditions subsequently" set forth in the August 8, 2007, Order.² RPI recommends that the Board deny UPC's request to begin construction of the meteorological towers.

On January 28, 2008, UPC filed a letter requesting that the Board withhold approval of the December 21 filing until it had sufficient time to address the Department's concerns with the proposed decommissioning plan.

On February 5, 2008, UPC filed a letter in response to RPI's comments. UPC contends that the Board should disregard RPI's claim of insufficiency in UPC's decommissioning cost estimate. UPC asserts that, because it presented its cost estimate during the evidentiary hearings, all of RPI's criticisms of the estimate "could have and should have been raised during the evidentiary proceedings," and thus collateral estoppel precludes RPI from raising those claims at this time. UPC further asserts that, even if the Board were to consider RPI's arguments, those arguments would not withstand scrutiny. UPC also contends that the Board should not provide for discovery and hearings on every condition subsequent, and should instead determine the appropriate process for compliance filings on a case-by-case basis.

1. On January 14, 2008, RPI requested an extension of time to file comments on UPC's December 21 filing and then filed its comments the next day. It then filed additional comments on January 22, 2008. The Board has considered RPI's comments in ruling on UPC's request.

2. We understand RPI's reference to "conditions subsequent" to mean those conditions that need to be satisfied after the CPG was issued in order for the CPG to be effective.

On February 8, 2008, UPC filed a revised decommissioning plan that includes modifications responding to each of the Department's concerns.

On February 13, 2008, RPI filed comments in response to UPC's February 5 and 8 filings. RPI asserts that UPC's decommissioning plan appears to be insufficiently funded and "very limited in scope." RPI reiterates its position that no project construction should be allowed until all CPG conditions have been met.

On February 21, 2008, the Board issued an Order approving construction of the meteorological towers. The Board's Order did not address the merits of the revised decommissioning plan, instead providing the parties with an opportunity to comment on the revised plan. The February 21 Order also required UPC to submit revised "leases that accurately reflect the requirements contained in the Board's August 8, 2007, Order."

On March 19, 2008, RPI filed a letter regarding alleged deficiencies in the application that UPC submitted to the Agency of Natural Resources for a stormwater construction permit. RPI contends that UPC "has substantially changed the turbine erection crane access road network," resulting in "a project that has been substantially amended" RPI reiterates its request for "discovery and a full evidentiary hearing on each and every one of the conditions subsequent"

On March 21, 2008, UPC filed revised lease language, in response to the February 21 Order. On April 10, 2008, the Department filed comments on UPC's revised lease language, recommending additional modifications.

On April 14, 2008, UPC filed a response to RPI's March 19 letter and the Department's April 10 comments. UPC states that it has no objection to the Department's proposed modifications to the lease language. UPC contends that no Board action is required at present regarding the stormwater construction permit, and that if any project changes are needed with respect to any of the environmental permits, then UPC "will identify the changes in the final design plans and seek whatever approvals are required by the Board." UPC continues to oppose RPI's request for discovery and hearings on all conditions subsequent.

Discussion

Lease Language

Condition 30 of the Board's August 8, 2007, Order states:

Prior to commencement of construction, UPC must provide a compliance filing demonstrating that the terms of the lease agreements with the owners of the land upon which the Project will be built contain reasonable assurance of compliance with conditions contained in the CPG.³

In its April 10, 2008, comments, the Department proposed the following modified language for the leases:

Lessor agrees that the employees and agents of the State of Vermont Public Service Board, Department of Public Service, and Agency of Natural Resources shall have the right to enter the property to ensure compliance with any conditions in the Certificate of Public Good dated August 8, 2007, and if Lessee is unable to timely decommission the Project, to enter the property and conduct decommissioning.

With UPC's acceptance of the Department's April 10 modifications to the lease language, there is no remaining dispute among the parties regarding the lease language. We have reviewed the filings, and conclude that the proposed lease language submitted by UPC on December 21, 2007, as modified by UPC's filing of March 21, 2008, and the Department's filing of April 10, 2008, satisfies the requirements of Condition 30 of the August 8, 2007, Order.

Decommissioning Plan

Condition 32 of the Board's August 8, 2007, Order states:

UPC shall file a decommissioning plan with the Board and parties prior to commencement of construction. The decommissioning plan may allow the fund to grow as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the fund may not net out the projected salvage value of the infrastructure. In addition, the decommissioning plan must include a description of how the fund would be secured and why that mechanism is appropriate; and if UPC elects to utilize a corporate guarantee to secure the fund, it must demonstrate how such a guarantee would be bankruptcy remote. If actual production falls below 65% of projected production during any consecutive two-year period, a decommissioning review is initiated; however, if UPC can demonstrate that it has entered into stably

3. Order of August 8, 2008, at 116.

priced power contracts with Vermont utilities through which a substantial amount of power is to be sold at stable prices, the Board may reduce the decommissioning trigger to as low as 50%.⁴

UPC's February 8, 2008, revisions to its decommissioning plan adequately address the issues that the Department had previously raised regarding the plan:⁵ the revised plan includes an appropriate adjustment for inflation; it provides for full decommissioning of the substation; and it includes as a reporting mechanism the requirement that UPC file with the Board the project's annual energy production as reported to ISO-New England.

RPI's claim that the decommissioning plan is insufficiently funded rests largely on a comparison of decommissioning costs to those estimated for the EMDC wind generation project that was proposed in Docket 6911, along with claims that UPC has underestimated the scope of certain decommissioning activities. As UPC correctly notes, the estimated decommissioning costs were litigated during the evidentiary hearings, and there is no basis for reopening that issue. Furthermore, not only are the EMDC cost estimates outside the evidentiary record in this docket, but also they relate to an entirely different project.

We conclude that the revised decommissioning plan submitted by UPC on February 8, 2008, satisfies the requirements for the plan set forth in Condition 32 of the August 8, 2007, Order. We therefore approve the revised decommissioning plan.

RPI's Request for Discovery and Hearings

RPI's request for discovery and full evidentiary hearings on every condition subsequent set forth in the August 8, 2007, Order, is without merit and is therefore denied. As UPC notes, many of those conditions merely require UPC to submit information to confirm that, for example, a specified permit has been obtained, without any provision for further review or Board approval. Thus, RPI's request for discovery and hearings is clearly overbroad. For those conditions that do contemplate further Board review and approval, RPI's request is both

4. Order of August 8, 2008, at 116.

5. We note that the Department did not file any objections to UPC's February 8 revised plan.

unsupported (for those compliance filings that are presently before the Board) and premature (for those that are not). To justify further discovery or hearings regarding a compliance filing, a party should demonstrate that the compliance filing raises a significant issue that was not, and could not reasonably have been, adequately addressed during the pre-certification evidentiary hearings. RPI has not made such a showing for the two compliance filings – the lease language and the decommissioning plan – that are the subject of today's Order.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The proposed lease language submitted by UPC on December 21, 2007, as modified by UPC's filing of March 21, 2008, and the Department's filing of April 10, 2008, satisfies the requirements of Condition 30 of the August 8, 2007, Order in this Docket, and is approved.
2. The revised decommissioning plan submitted by UPC on February 8, 2008, satisfies the requirements for the plan set forth in Condition 32 of the August 8, 2007, Order, and is approved.
3. RPI's request for discovery and evidentiary hearings is denied.

Dated at Montpelier, Vermont, this 14th day of May, 2008.

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|------------------------|---|----------------|
| <u>s/James Volz</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/John D. Burke</u> |) | |

OFFICE OF THE CLERK

FILED: May 14, 2008

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.